U.S. Department of Labor

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Issue Date: 01 June 2004

CASE NO.: 2003-LHC-01010

OWCP NO.: 01-151732

In the Matter of

TINA CROFTON
Claimant

v.

ELECTRIC BOAT CORP.
Employer

Appearances: Scott N. Roberts, Esquire, For Claimant; Conrad M. Cutcliffe, Esquire, For Employer

Before: Janice K. Bullard
Administrative Law Judge

DECISION AND ORDER

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. ("the Act"), and the regulations promulgated thereunder. A hearing was held before me in New London, Connecticut on December 4, 2003. On February 17, 2004, Tina Crofton ("Claimant") filed a post-hearing brief. Also on February 17, 2004, Electric Boat ("Employer") filed a post-hearing brief. The following decision is based upon an analysis of the record, the arguments of the parties and the applicable law.[1]

I. STIPULATIONS AND CONTENTIONS OF THE PARTIES

The parties entered into the following stipulations: (Tr. at 5-6; Pre-hearing statements and filings of the parties.)

1. The parties are subject to the provisions of the Act.

2. An employer/employee relationship existed at the time of the alleged injury

[1] In this decision, "CX" refers to Claimant's Exhibits; "EX" refers to Employer's Exhibits and "Tr." refers to the transcript of the December 4, 2003 hearing.

3. Claimant has suffered an injury.

4. Claimant's alleged injury arose out of and in the course of Claimant's employment.

5. Claimant's average weekly wage at the time of injury was $778.88 with a corresponding compensation rate of $519.25.

6. The claim was timely filed.

7. Claimant reached maximum medical improvement on October 3, 2001.

8. The date of injury is sometime before September 2, 2000.

9. Employer is entitled to credit for compensation previously paid.

Claimant requests compensation for a 10% permanent partial disability assigned bilaterally to her hands by Dr. Philo Willetts pursuant to an evaluation requested by Employer. Claimant is not seeking compensation for the 47% impairment rating to each hand stated by Dr. Browning. Claimant's Brief at 10. Claimant also requests compensation for medical bills related to this diagnosis and treatment of her bilateral hand condition. Id. at 15.

Employer contends that the 5% rating of Dr. Hubbard is the proper rating of impairment. Employer's Brief at 15. Employer further contends that since it is owed a credit for compensation already paid, it is not obligated to pay any further compensation. Tr. 13. In the alternative, Employer contends that only 4% of Dr. Willetts' 10% rating is work-related, and Employer is therefore responsible only for the smaller percentage. Tr. 12-13.

II. ISSUES

The issue presented for adjudication is:

Whether Employer is liable for compensation of Claimant's hand impairment, and if so, what is the proper impairment rating;

Whether Employer must pay Claimant's outstanding medical bills as reasonable and necessary medical treatment for Claimant's condition;

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Summary of the Evidence

Claimant stated that she started working with Employer in 1988 at the age of 24 as a structural welder. Tr. 17-18. As a welder, half of the Claimant's day was spent welding, and the other half grinding. Tr. 19. Claimant engaged in pulse and stick welding. Tr. 21. Pulse welding involved holding the trigger of the welding gun while working with a feed off of a large roll. Tr.

21. Stick welding involved welding by hand. Tr. 22. Claimant used regular grinders, needle guns and large pneumatic grinders. Tr. 22. Claimant stated that the building she worked in was very cold, as were the tools, which often froze. Tr. 22-23. Claimant also used a burr tool, a sharp vibrating tool, to work on cracks. Id. Claimant is currently out of work because of a motor vehicle accident. Tr. 24. Claimant first reported problems with her hands in 1993. Id. She stated that she would "wake up in the morning almost screaming because the pain was so excruciating and the numbness and everything that I had to have surgery for - - I couldn't go on any longer." Tr. 25. Claimant stated that she saw Dr. Hubbard for the numbness she was experiencing in her fingers and arms. Tr. 26. Claimant stated that the pain in her hands got increasingly worse over time. Tr. 27. Claimant had carpal tunnel surgery in 2001 upon the recommendation of Dr. Hubbard. Tr. 26. Claimant was laid off from Employer in 1994 for approximately 2 ½ years. Tr. 27. During this period Claimant worked as a waitress and house cleaner and stated that her hands "bothered me occasionally, but it didn't bother me that much." Id. Claimant was rehired by Employer as a structural welder in 1997. Tr. 28

Claimant stated that after resuming work with Employer the pain in her hands returned almost immediately, and was quite intense at times. Tr. 29. Claimant went back to Dr. Hubbard who recommended carpal tunnel surgery. Tr. 29-30. After the surgery, Claimant was out of work for three to four months and was paid workers' compensation benefits. Id. at 30. After returning to work, Claimant was restricted from using air tools. Id. Claimant stated that she did some tank monitoring as well as welding when she returned. Tr. 31. Claimant still experiences cold in her hands. Id. She stated that she has to "run them under hot water about three or four times a night at work, and it takes about a good 20 minutes, half an hour for them to warm up." Tr. 32. Claimant also wears gloves at work to keep her hands warm. Id. Claimant saw doctors at University of Connecticut medical facility upon the recommendation of her former attorney. Tr. 34. Claimant started seeing Dr. Browning on recommendation from her current attorney. Tr. 36. Claimant stated that to the best of her recollection, Dr. Hubbard never ordered blood work for her, nor did he send her for tests regarding the coldness in her hands. Tr. 37-38. Claimant stated that the coldness in her hands prevents her from swimming, shoveling and other activities. Tr. 45. Claimant takes Procardia which was prescribed by Dr. Browning. Tr. 45. Claimant stated that her surgery alleviated the pain in her hands. Tr. 49. Claimant also stated that she seriously injured her right ring finger. Tr. 51. Claimant has smoked ½ a pack to 1 pack of cigarettes per day for 16 years. Tr. 52.

Employer's First Report of Injury (EX 1)

The January 17, 2001 report describes the Claimant's injury as "cumulative trauma-right wrist" as well as "alleged carpal tunnel."

Notice of Controversion (EX 2)

The January 17, 2001 notice controverts Claimant's right to compensation for causal relation, lack of medical documentation and lack of notification.

Notice of Final Payment or Suspension of Compensation Payments (EX 3)

The August 6, 2001 notice states that payments were terminated because Employee returned to work.

Form LS-206 (EX 4)

The April 19, 2001 form states that Claimant was paid at a compensation rate of $519.25 starting from April 5, 2001.

State of Rhode Island Workers Compensation Report of Payment (EX 5)

The November 28, 2001 form indicates that the Claimant was compensated $1080 for a carpal tunnel related injury and also $500 in attorney's fees.

State of Rhode Island Workers' Compensation Mutual Agreement (EX 6)

The November 27, 2001 agreement states that the Claimant is to be paid $90 per week for 12 weeks for left and right hand carpal tunnel scars.

Form LS-206 (EX 7)

The December 19, 2001 form states that Claimant is to be compensated by Employer at a compensation rate of $519.25 starting from October 3, 2001, which is the date that the impairment rating was assigned.

Notice of Final Payment or Suspension of Compensation Payments (EX 8)

The May 15, 2002 notice states that Claimant was paid in full for her permanent partial disability by Employer in the sum of $16200.60.

Notice of Controversion of Right to Compensation (EX 9)

The February 4, 2003 notice controverts the Claimant's right to compensation for the following reasons:
Injury
Disability
Causal relationship to employment
Lack of medical documentation
Statute of limitations
Notice of late report
Injury did not arise during self-insurance
Self-insured controverts recommendation dated 1/27/03 and received on 2/03/03

Pre-Hearing Statement of Employer (EX 10)

The January 28, 2002 statement lists nature and extent of injury and medical benefits as issues to be presented for resolution at the hearing.

Subpoena of Records of Dr. Frank LaFazia (EX 11)

The August 29, 2003 subpoena requests all documents relating to Claimant.

Records of Dr. Frank LaFazia (EX 12)

The records document various results from tests that were administered to Claimant . Included is a December 9, 2002 letter from Dr. Browning stating that Claimant has severe vasospasm. The physician recommends a thoracic sympathectomy for the Claimant. He also states in the letter:

> As noted, we have not been able to find any evidence or secondary causation or collagen disease, other than an elevated ANA, and I have not been able to find any physical finding that would justify such a diagnosis at this time. I would think that a workup by a rheumatologist would not be amiss; simply as a double check to make sure that we have not missed anything.

Reports of UConn Medical Group (EX 13)

A January 22, 2002 physical examination states an assessment of "carpal tunnel syndrome, status post bilateral carpal tunnel release, about one year previously, with good resolution of symptoms." The assessment also found "[h]and arm vibration syndrome, with symptoms quite suggestive of vibration white finger, with marked response to cold."

Also included is an April 9, 2002 letter from Dr. John Meyer. The letter states a 10-12 year history of exposure to vibrating tools. The letter states that a previous physical examination "showed no evidence of recurrent or ongoing carpal tunnel symptoms or signs." The physician also stated that "[t]he only laboratory value of note was a positive ANA, at 1:2560. It is not clear what this finding means, as she exhibits no signs or symptoms of lupus, although the problems in her fingers may be symptomatic. Of note, her ERS was normal, and this argues against an ongoing or current inflammatory condition."

Medical Reports from Dr. S.P. Browning (EX 14)

A December 9, 2002 letter from the doctor states that he is treating Claimant for Hand/Arm Vibration Syndrome. The physician opined:

> This condition produces vasospasm. I do not believe she has any vaso-obstructive condition. I have not been able to document a secondary cause, such as a collagen disease. She does have a high ANA, which we have not been able to

> explain, but she has no other corroborating features of any of the collagen diseases.

Reports of Rhode Island Hand and Orthopedic Center (EX 15)

The records detail treatment received by Claimant from March 2001 through July 2001. The records indicate that Claimant underwent successful endoscopic carpal tunnel release surgery on April 5, 2001 and April 26, 2001. Records from May 2001 note slow progress and document that Claimant continued to experience moderate pain and soreness. Records from July and August 2001 show that the Claimant experienced moderate to significant discomfort with pressure, although she had been able to continue with all activities, including welding. An Affidavit of Physician Per Section 28-33-8(c) of the Rhode Island Workers' Compensation Act signed by Dr. Hubbard, is of record, and states that Claimant was treated for bilateral carpal tunnel syndrome. A Physician's Notice of Release to Work was signed by Dr. Hubbard on July 30, 2001 permitting Claimant to return to work on August 6, 2001.

Dr. Hubbard's notes from October 3, 2001 state that the Claimant "has gone back to most of her activities and has very little in the way of pain." The physician stated that the Claimant has reached maximum medical improvement and suffers from a permanent partial disability of 5 percent in both upper extremities. The physician's notes from March 15, 2002 indicate no significant pain and satisfactory progress. On October 2, 2002, Claimant was found to have "obvious triggering of the right thumb with a palpable nodule present at the A1 pulley level." On October 30, 2002 Claimant was found to have full range of motion with no triggering.

Records from William T. Backus Hospital (EX 16)

The records include what appear to be blood test results from August 21-23 of 2002.

Medical Report of Dr. Arnold-Peter C. Weiss (EX 17)

The October 21, 2003 report is based on Claimant's medical and working history as well as a physical examination performed by the doctor. The physician noted normal temperatures in both hands and no evidence of Raynaud's. His diagnosis includes bilateral carpal tunnel syndrome that has been resolved as well as "Raynaud's phenomenon made worse by secondary vibratory tool." The physician opined that Claimant return to her normal work without restriction. The physician concluded:

> I do not believe any further treatment is appropriate for this particular patient. The only treatment that might help her is medication, although this will not solve her problems. It will however help her symptoms. Using the Standard Guidelines as provided by the American Medical Association for the determination of permanent partial impairment, I find a 4 percent impairment rating of the right upper extremity and a 4 percent impairment rating of the left upper extremity based on her current symptomatology.

Deposition of Dr. Philo F. Willetts, Jr. (EX 19)

The deposition was taken on September 29, 2003. Dr. Willetts stated that he is a board certified orthopedic surgeon who has been practicing for 30 years. EX 19 at 3. Dr. Willetts reviewed the records of Dr. Hubbard, Dr. Meyer and Dr. Felice. Id. at 5-6. The physician opined that Dr. Hubbard's notes indicated that Claimant's surgery was successful. Id. at 5. The physician stated that he noted an abnormal ANA test in Dr. Meyer's records. Id. at 6. He stated that the test "strongly indicates that there is some underlying soft tissue disease. Not necessarily lupus, but others such as scleroderma or mixed connective tissue disease, or CREST." Id.

Curriculum Vitae of Dr. Arnold-Peter Weiss (EX 20)

Dr. Weiss is a professor in the Department of Orthopaedics, Division of Hand, Upper Extremity, and Microvascular Surgery at Brown University. He is board certified in orthopaedic surgery and also has a certificate of added qualification in surgery of the hand from the American Board of Orthopaedic Surgery.

Letter to Claire White, OWCP, Department of Labor (CX 1)

The June 10, 2002 letter states the appearance of Scott N. Roberts as counsel for Claimant. Also included is a letter from Claimant to the Department of Labor requesting that all correspondence regarding the claim be sent to Mr. Roberts.

Medical Records of Dr. Leonard Hubbard of Rhode Island Hand & Orthopaedic Center (CX 2)

Included in the records is a January 22, 2001 letter from Dr. Gary A. L'Europa regarding neurophysiological testing performed on the Claimant. A review of the Claimant's systems was remarkable for numbness, tingling and bruising. The exam found Claimant's nerve conduction studies to be abnormal:

> Nerve conductions were performed in both upper extremities and were significant for the following: Right median sensory responses were depressed and prolonged. Right median motor response was depressed and prolonged. Left median motor response was depressed and prolonged. Left median palmar sensory response was prolonged.

The letter stated an impression of "bilateral distal median neuropathies consistent with bilateral carpal tunnel syndrome." Included with Dr. Hubbard's records are the results of the neurophysiological tests that formed the basis of his diagnosis.

Medical Opinion Report of Dr. John Meyer (CX 3)

Dr. Meyer's January 28, 2002 report reviews Claimant's work history with Employer. The report noted that Claimant's carpal tunnel surgery was successful stating "she felt considerably better after surgery, and the numbness and related feelings in her hands were gone. She indicated that her hands still feel weak, however, subsequent to the surgery." The

physician's report stated that the Claimant's primary complaint was "numbness, and blanching of her fingers." Claimant stated that her symptoms have bothered her since 1997 and have gotten worse over the past year.

The physician stated that Claimant's exposure to vibrating tools "would have to be considered the etiology of her current symptoms." The report states an assessment of carpal tunnel syndrome with good resolution of symptoms and "[h]and arm vibration syndrome, with symptoms quite suggestive of vibration white finger, with marked response to cold." Claimant was also given a pair of battery operated warming gloves.

Medical Reports of Dr. Pearce Browning (CX 5)

In a December 2, 2002 report Dr. Browning stated that Claimant's abnormal ANA testing result cannot be explained. The physician opined that Claimant's primary problem was severe vasospasm. The physician prescribed Procardia XL. The technician who tested the temperature of Claimant's fingers stated that "she was one of the most severe cases of vasospasm that they had a chance to see." The physician recommended that a thoracic sympathectomy could be helpful. The physician opined "[c]onsidering the severity of the vasospasm, the extremely poor pulse waves in the second, third, fourth and fifth digits bilaterally, and the extremely positive cold challenge test, I would assign 35% for vascular. I would assign 12% permanency for neuromuscular at this time." Dr. Browning stated that if Claimant had surgery, the permanency rating would have to be reviewed a year after surgery. The physician stated Claimant should not return to using air or vibrating tools and "not to work in ambient temperatures below 50º F[.]"

In a September 17, 2002 letter to Dr. LaFazia, Dr. Browning opined "[d]espite the high ANA, I see no evidence of lupus, scleroderma, collagen disease, or rheumatoid arthritis, on physical examination or in the lab work. It is possible that she has primary Raynaud's."

In an August 22, 2002 report Dr. Browning stated that that Claimant's "vascular symptoms are severe." The physician reviewed Claimant's complaints of excessive coldness in her hands. The physician characterized the results of Claimant's grasp and pinch tests as "significantly low." Dr. Browning noted that nine out of Claimant's ten digits "are below 30º C after being in the office for over 30 minutes. The office is at 72º." In another letter written on August 22, 2002, Dr. Browning opined that Claimant "has done quite well symptomatically since her carpal tunnel release 16 months ago as far as the neurologic symptoms are concerned, but she's having a good deal of trouble with the vascular side."

Hematologic Studies from the William W. Backus Hospital (CX 6)

The studies are dated August 20, 2002 through August 23, 2002.

Medical Report of Anthony G. Alessi (CX 7)

The October 1, 2002 report is based on a physical examination performed by the physician as well as Claimant's work history. Dr. Alessi concluded:

> Based on my evaluation today of Ms. Crofton, it is my feeling she does not have any ongoing damage to the median nerves and this has most likely been relieved by the carpal tunnel surgery. There is evidence of mild ulnar neuropathies at the elbows. I have not scheduled her for a return visit and she will be following-up in your office.

Medical Report of Dr. Larry Coletti (CX 8)

The November 27, 2002 medical report is based on a physical exam performed by the physician. Examination of Claimant's upper arm and forearm were unremarkable. Examination of the digits indicated abnormal pulse volume recordings. The physician also performed a cold stress test:

> Initial temperatures were cold, therefore hands were warmed for 3 minutes under heating pads. Following this, ice water immersion was performed for 30 seconds. The hands had not rewarmed at 20 minutes time. The hands initially were red and following ice water, a blue coloration was noted which lasted 20 minutes.
>
> The physician concluded "abnormal cold stress exam consistent with severe vasospastic phenomenon." He also found "slightly low right 5th digit blood pressure."

Outstanding Medical Bills (CX 9)

A June 30, 2003 statement from William Backus Hospital for services on August 19, 2002, states an outstanding balance of $758.83.

A December 6, 2002 statement from Vascular Services for an arterial study and cold stress exam on November 20, 2003 states an outstanding balance of $350.00.

A billing statement from John Dempsey Hospital states an outstanding balance of $127.66 for outpatient services rendered on January 22, 2002.

Medical Opinion Report of Dr. Philo F. Willetts (CX 10)

The March 25, 2003 report was based on the notes and records of Dr. Hubbard, Dr. Meyer, Dr. Felice, Dr. Browning, Dr. Alessi. The physician opined that Claimant's "elevated ANA is grossly abnormal and indicates an underlying systemic disorder that often produces numbness and Raynaud's phenomena in and of itself." The physician opined that Claimant's current condition was the result of her exposure to vibrational tools:

> [Claimant's] work activities and reported exposure to vibrational tools six to fifteen hours per week for a number of years probably did contribute to her neuropathy. Her vascular abnormality is possibly related to such exposure but is more likely reflective of either a primary Raynaud's syndrome or an underlying collagen/soft tissue disease manifested by the markedly increased lupus ANA test.

The physician recommended that Claimant undergoe tests for lupus and other collagen diseases in order to determine the cause of the high ANA results. Based on the AMA guidelines and the reports of Dr. Alessi and Dr. Browning, Dr. Willetts found a "2% permanent partial physical impairment of the right upper extremity." Dr. Willets opined that [t]here is no basis for any consistent or credible muscle weakness on the examinations reviewed and thus, it would be inappropriate to . . . to provide impairment on muscle weakness." Based on Claimant's complaints and vascular studies, the physician assigned the Claimant a "7% permanent partial physical impairment of the right upper extremity on a vascular basis." Using the AMA guidelines, the physician concluded that Claimant's "9% right upper extremity impairment is equivalent to 10% permanent partial physical impairment of the right hand." Dr. Willets stated that 4% of the permanent partial impairment is related to her work for Employer and the remaining 6% is the result of "non-work-related factors." The physician also found a 10% permanent partial physical impairment for Claimant's left hand, with 4% attributable to Claimant's work with Employer.

The physician stated that Claimant has reached maximum medical improvement and that she can return to work.

Deposition of Dr. S. Pearce Browning III (CX 11)

Dr. Browning stated that he saw Claimant on August 19, 2002 and November 26, 2002 and referred her for vascular, neurological and laboratory testing. CX 11 at 3. The physician is currently retired and the principal part of his practice since 2000 has been evaluations. CX 11 at 5. Dr. Browning stated that he has performed about one thousand hand-arm evaluations since 1987. Id. Dr. Browning stated that cigarette smoking affects the recovery rate of an individual after a cold stress test, but opined that "it does not produce a temperature response like this." CX 11 at 10-11. Dr. Browning did not notice any color change in the Claimant's hands. CX 11 at 12. The physician found Claimant's ANA level to be highly elevated but was unable to determine a cause. He opined that the test results are not a possible cause for the Claimant's subjective symptoms. CX 11 at 14. Dr. Browning stated that Claimant probably suffers from severe Raynaud's disease. CX 11 at 15. He also indicated that it is possible that she suffers from primary Raynaud's, which occurs when the condition appears without any cause. CX 11 at 16. The physician explained how he determined Claimant's impairment rating:

> Going to the book Mastering the AMA, Master to the AMA Guides, page 252 of the top paragraph there refers to diagnostic criteria for Raynaud's Class II syndrome need to have obstructive physiology, which she doesn't have, or measured low temperatures that do not normalize with warming of the affected digit. I use this when we have a combination of a very positive cold challenge test and the pulse waves are bad. I'm able to document decreased temperatures on more than one occasion, then I place the individual in Class II, which on the AMA scheme is between 10 and 39 percent.

CX 11 at 21.

The physician placed Claimant in the upper realm of the category based on her medical history, physical examination and finger temperature readings. Id. He states that other factors, other than vibrational tools, can cause vasospasm, but stated that all other possibilities were excluded. CX 11 at 23. The physician opined that a re-check of Claimant's ANA levels was a "reasonable and necessary medical treatment and evaluation in order to exclude other systemic conditions which may be producing or contributing to the degree of vasospasm that is there[.]" The physician stated that in order to determine what impairment rating within class II to give Claimant he took into consideration Claimant's recovery after cold challenge as well as pulse waves. CX 11 at 29. He states "[i]f she had had relatively normal pulse waves, the rating would have been a lot lower. If she had not had such an extended vasospasm to the cold challenge, the rating would have been significantly lower[.]" CX 11 at 30.

Deposition of Dr. Larry Coletti (CX 12)

Dr. Coletti is the chairman of surgery at William W. Backus Hospital and is board certified in general surgery. CX 12 at 4. The physician also works with Vascular Associates performing noninvasive vascular testing. Id. The physician stated that the purpose of the testing performed on Claimant was "to determine whether or not the patient has a vascular injury or a vascular condition." CX 12 at 6. The physician stated that "the study is geared to determine whether or not there is a fixed obstruction of the arterial system or whether there is an intermittent obstruction of the system." Id. Dr. Colletti stated that he took segmental limb pressures of the Claimant that were normal. CX 12 at 9. The physician stated that "there is no fixed obstruction to any of the arteries going down to the hand because this is all normal." Id. Dr. Colletti found the pressures in both arms and hands to be normal except for the fifth digit on the right hand. CX 12 at 10. The physician stated that before performing the cold immersion test, Claimant's hands needed to be warmed because they were not 30 degrees or higher. CX 12 at 12. Claimant's hands were placed in warmers for three minutes which increased temperature readings. Id. The physician found this to be significant. "That alone means that her arteries dilate. They dilate, they take the heat, they get bigger in order to get that type of warming." CX 12 at 12-13. Claimant's hands did not return to normal temperature until 20 minutes, with the normal recovery time being 10 minutes. CX 12 at 13. The physician stated that this is indicative of "some sort of vasospastic condition." Id. The physician stated that he does not attempt to find a cause for the vasospasm because his facility merely is a testing facility. Id. Dr. Coletti never saw Claimant and his evaluation was based on her tests results. CX 12 at 17. He stated that smoking, caffeine, stress, certain medications and the sex of the patient all affect cold stress recovery time. CX 12 at 18-19. The physician opined that while Claimant's smoking history is substantive, "I'm not sure that there is enough there to really cause a great deal of vasospasticity in the hands." CX 12 at 20. Dr. Coletti stated that the normal color progression for Raynaud's in a patient's hands are from white to blue to red and Claimant's hands went from red to blue. CX 12 at 21. The physician stated that the technicians who administered the cold stress exam to Claimant failed to record the room temperature at the time of testing, which is required. CX 12 at 24-25. Dr. Coletti stated that "if that cold stress examination is positive it indicates it correlates pretty well with vasospasm."

IV. DISCUSSION

1. Claimant is entitled to compensation for her 4% bilateral hand impairment.

Pursuant to Section 8 of the Act:

> Compensation for disability shall be paid to the employee as follows . . . (c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66 2/3 per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section respectively and shall be paid to the employee as follows . . . (3) Hand lost, two hundred and forty-four weeks' compensation.

Claimant first was under the care of Dr. Hubbard. The physician diagnosed Claimant with bilateral carpal tunnel syndrome and performed right and left carpal tunnel release surgery in April 2001. CX 2 at 5. On October 3, 2001, Dr. Hubbard assigned a 5% permanent partial impairment to both upper extremities. CX 2 at 1. Employer paid for Claimant's carpal tunnel procedure as well as the 5% rating. (EX 5, EX 6, EX 7). Claimant testified at the hearing that she continued to experience discomfort, namely coldness and numbness, in her hands after the surgery. Tr. 31-32. Dr. Hubbard's rating was based on Claimant's carpal tunnel related problems and therefore, does not adequately address Claimant's current hand difficulties. Employer maintains that Dr. Hubbard's evaluation should be viewed as complete and inclusive of all of Claimant's hand problems. Employer's Brief at 5. Employer maintains since Dr. Hubbard had no reports of vascular problems, his 5% impairment rating which was compensated by Employer, should stand alone as the only indication of Claimant's current condition. Claimant contends that while Dr. Hubbard's carpal tunnel surgery provided Claimant some relief, it was predicated on an incomplete diagnosis which did not address Claimant's vascular difficulties. Claimant's Brief at 4. Dr. Meyers diagnosed Claimant with hand/arm vibration syndrome, stating that "these symptoms have bothered her since 1997 . . . and have become considerably worse over the past year." The records indicate that Dr. Browning was treating Claimant for hand/arm vibration syndrome. EX 14. Dr. Weiss diagnosed carpal tunnel syndrome as well as "Raynaud's phenomenon made worse by a secondary vibratory tool." EX 17. The injury is distinct from Claimant's previously compensated carpal tunnel syndrome. I find that Claimant does indeed suffer from hand/arm vibration syndrome, the symptoms of which she has experienced for some time. The extent of impairment must now be determined.

Claimant testified that the coldness she experiences requires her to run her hands under warm water at work three or four times. Tr. 32. Claimant was first diagnosed as having hand-arm vibration syndrome by Dr. Meyer on January 22, 2002. CX 4. The physician stated that further tests needed to be performed in order to determine an underlying cause, but in the absence of another explanation, the cause of the condition would be Claimant's exposure to vibrating tools. Id. The physician noted a high ANA study finding, but it was unclear to him what the finding meant. Id.

Employer submitted the medical opinion report of Dr. Arnold-Peter Weiss. EX 17. Dr. Weiss examined Claimant and assigned a 4 percent rating of Claimant's upper right and left extremities. Id. Dr. Weiss opined that Claimant's carpal tunnel syndrome was work-related and

that her current "Raynaud's phenomenon is due to her underlying health status but it is aggravated by her on-the-job activities." Id. Dr. Weiss states that Claimant can return to work without restriction. Id. His opinion is based on Claimant's medical records and a "five minute" physical examination of her hands. Tr. 43. Although Dr. Weiss stated that "[e]xtensive medical records were reviewed for this particular examination", his report does not reference any specific medical records. EX 17. Dr. Weiss' opinion is cursory and lacking in detail. Accordingly, I find his impairment rating to be overly conclusive and entitled to little weight.

Claimant was also evaluated by Dr. Browning. Dr. Browning found that Claimant has severe vasospasm and prescribed Procardia to treat the problem. CX 5. Dr. Browning also found Claimant's high ANA finding notable, but could not explain the significance of those test results. CX 5. Dr. Browning assigned Claimant an impairment rating of 47%. (CX 5, CX 11 at 21). Dr. Browning's disability rating is more than three times higher than the next highest rating of record. Claimant has conceded that she is not seeking compensation based on Dr. Browning's rating. Claimant's Brief at 10. Accordingly, I have discounted Dr. Browning's impairment rating, and have not considered it in my determination in this matter.

The only remaining impairment rating is that of Dr. Willetts. Dr. Willets assigned an impairment rating of 10% for both upper extremities. CX 10. The physician stated that "[o]f the 10% permanent partial physical impairment of the right hand, it would be fair to apportion 4% permanent physical impairment of the right hand to her work activities over the years at Electric Boat Corporation." Id. Dr. Willets came to the same conclusion regarding Claimant's left upper extremity. Id. In his report, Dr. Willets opined that Claimant's abnormal ANA reading "indicates an underlying systemic disorder that often produces numbness and Raynaud's phenomena in and of itself." CX 10. The physician separates Claimant's injury into vascular and neurological components. Id. He stated that Claimant's neuropathy is probably related to her work with vibrational tools and the vascular component is possibly related to work but "more likely reflective of either a primary Raynaud's syndrome or underlying collagen/soft tissue disease[.]" Id. The physician opined that Claimant's smoking history contributed to her present condition. Id.

Claimant's argues in her brief that under the "aggravation rule" Employer is liable for the entire injury, not merely the 4% ascribed to Claimant's work activities. Claimant's Brief at 11. Claimant misapplies the aggravation rule in this situation. The rule holds that if an employment-related injury contributes to, combines with, or aggravates a pre-existing disease or underlying condition, the entire resultant disability is compensable. Strachan Shipping v. Nash, 782 F.2d 513 (5th Cir. 1986); Mijangos v. Avondale Shipyards, 19 BRBS 15 (1986). Dr. Willets diagnosed the Claimant as suffering from an injury to her hands characterized by both neurological and vascular impairment, concluding that only the neurological component is work related. When asked if Claimant's Raynaud's symptoms were caused by her work with Employer, Dr. Willetts stated:

> No. It is likely that she has it, but there are numerous causes of Raynaud's syndrome or Raynaud's types of finger blanching phenomenon whatever one wishes to call it. And only one of those causes out of about 25 is vibration. And

> unfortunately, with her high ANA, one must worry considerably about a more serious cause of it.

EX 19 at 24. The physician was able to distinguish the two components of Claimant's injury and nowhere in his report does he state that Claimant's use of vibrational tools aggravated or combined with Claimant's Raynaud's related condition. Further, the physician, along with the other physicians of record, opined that the Claimant likely suffered from some underlying collagen disease, but stated that "it would be critically important that she be evaluated by a rheumatologist." EX 19 at 8. Claimant's hand/arm vibration syndrome and Raynaud's symptoms are separate and distinct conditions, and, therefore, the aggravation rule does not apply. I find that Dr. Willets gave the most comprehensive opinion regarding the causation of Claimant's conditions and their relationship to her work. Based on Dr. Willets' reports, I therefore find that Claimant is entitled to compensation for a 4% impairment of her right hand and a 4% impairment of her left hand.

2. Claimant is entitled to payment for outstanding medical bills incurred while diagnosing and treating her bilateral hand condition as reasonable and necessary medical treatment for her injury.

Section 7(a) of the Act provides that:

> The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

33 U.S.C. § 907(a). The medical expense requested must be both reasonable and necessary. Pernell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). It is the Claimant's burden to establish the necessity of treatment rendered for his work-related injury. See generally Schoen v. U.S. Chamber of Commerce, 30 BRBS 112 (1996); Wheeler v. Interoccan Stevedoring, Inc., 21 BRBS 33 (1988); Ballesteros v. Williamette Western Corp., 20 BRBS 184 (1988).

Claimant requests that Employer pay three outstanding medical bills which she incurred in treating her bilateral hand condition. Claimant's Brief at 15. The outstanding bills consist of a Backus Hospital Bill in the amount of $758.83, a Vascular Associates bill in the amount of $360 and a John Dempsey Hospital bill in the amount of $127.66. CX 9. It is clear from the record that Claimant has attempted on numerous occasions to seek proper diagnosis and treatment for her bilateral hand condition. I find that the tests and consultations were necessary to the proper diagnosis of her condition. Employer has not raised any objections to Claimant's request for payment of these bills. Accordingly, I find that payment of these outstanding bills constitutes reasonable and necessary medical treatment for Claimant's hand condition.

ORDER

It is ORDERED that:

1. Employer shall pay Claimant for her 4% bilateral hand impairment at a compensation rate of $519.25 for a period of two hundred forty-four weeks.

2. Employer shall pay the three remaining outstanding medical bills in the amount of $1246.49.

3. Employer shall receive credit for previous disability compensation already paid to Claimant.

4. Claimant's counsel may file and serve a fee and cost petition in compliance with 20 C.F.R. § 702.132. He shall first attempt to reach an agreement with opposing counsel regarding fees and costs, and set forth the extent of those discussions in his petition.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey